

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 20-0226 BLA

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| BOYD E. YORK |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| COASTAL COAL COMPANY, LLC |) | |
| |) | |
| and |) | |
| |) | |
| UNDERWRITERS SAFETY & CLAIMS |) | DATE ISSUED: 05/20/2021 |
| |) | |
| Employer/Carrier- |) | |
| Respondents |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | DECISION and ORDER |

Appeal of the Decision and Order Denying Benefits Upon Request for Modification of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Joshua D. Howard (Howard Law Firm, PLC), Pineville, Kentucky, for Claimant.

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for Employer and its Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge Scott R. Morris's Decision and Order Denying Benefits Upon Request for Modification (2018-BLA-06246) rendered on a claim filed pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act). This case involves Claimant's request for modification of the denial of his claim filed on May 29, 2009.

In a November 4, 2015 Decision and Order Denying Benefits, Administrative Law Judge Lystra A. Harris credited Claimant with thirty-five years of underground coal mine employment but found he failed to establish a totally disabling respiratory or pulmonary impairment or the existence of pneumoconiosis. 20 C.F.R. §§718.202(a)(1)-(4), 718.204(b)(2); Director's Exhibit 103. She therefore denied benefits. Director's Exhibit 103. Claimant requested modification of the denial on November 2, 2016. Director's Exhibit 104.

Judge Morris (the administrative law judge) credited Claimant with thirty-five years of qualifying coal mine employment, based on the parties' stipulation, but found he failed to establish total disability and therefore did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4)(2018).¹ He further found Claimant failed to establish the existence of pneumoconiosis. 20 C.F.R. §718.202(a). Finding Claimant did not establish a change in conditions or a mistake in a determination of fact under 20 C.F.R. §725.310, he denied benefits.

On appeal, Claimant challenges the denial of benefits. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.² 33 U.S.C. §921(b)(3), as incorporated

¹ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant’s brief summarizes the district director’s May 29, 2009 Proposed Decision and Order as well as Judge Harris’s November 4, 2015 Decision and Order Denying Benefits, and asserts errors in Judge Harris’s 2015 decision.³ Claimant’s Brief at 1-6. However, Judge Harris’s 2015 Decision and Order is not the subject of this appeal. Rather, Claimant requested modification of Judge Harris’s Decision and Order and is now appealing Judge Morris’s February 24, 2020 Decision and Order Denying Benefits Upon Request for Modification. Claimant, however, does not address Judge Morris’s 2020 decision or present any argument demonstrating error on the part of Judge Morris in support of this appeal. Indeed, Claimant’s brief to the Board makes no reference to Judge Morris’s 2020 decision or his findings that Claimant failed to establish total disability, pneumoconiosis, a change in conditions, or a mistake in fact.

The Board’s limited scope of review requires a party challenging the Decision and Order below to address that decision and demonstrate why substantial evidence does not support the result reached or why it is contrary to law. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Cox v. Director, OWCP*, 791 F.2d 445, 446 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465, 1-466 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). Unless the appealing party identifies errors in the administrative law judge’s decision and briefs its allegations in terms of the relevant law and evidence, the Board has no basis upon which to review the decision. *See Sarf*, 10 BLR at 1-120; *Fish*, 6 BLR at 1-109.

Because Claimant’s assertions provide no basis for the Board’s review of Judge Morris’s 2020 decision, we decline to address them. 20 C.F.R. §§802.211(b), 802.301(a); *see Cox*, 791 F.2d at 446; *Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 1-109. We thus affirm the administrative law judge’s findings that Claimant failed to establish total disability or the existence of pneumoconiosis and, thus did not establish a change in conditions or a mistake of fact to justify granting modification of the previous decision denying benefits.

³ Along with his petition for review, Claimant also submitted additional evidence to the Board in the form of a September 17, 2019 x-ray reading by Dr. Crum, and contends it demonstrates he has pneumoconiosis. This evidence was not in the record when the case was before the administrative law judge and therefore constitutes new evidence. The Board may not consider new evidence, and the parties may not submit new evidence to the Board. 20 C.F.R. §802.301(a), (b). We must therefore return the evidence to Claimant without considering it. 20 C.F.R. §802.301(b).

20 C.F.R. 725.310; *see Youghiogheny & Ohio Coal Co. v. Milliken*, 200 F.3d 942, 954 (6th Cir. 1999); *Nataloni v. Director, OWCP*, 17 BLR 1-82, 1-84 (1993).

Accordingly, we affirm the administrative law judge's Decision and Order Denying Benefits Upon Request for Modification.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge